



## 2019 EXCEL TRAINING CONFERENCE AGENDA (EXamining Conflicts in Employment Law)

The EXCEL Training Conference is where Equal Employment Opportunity (EEO), Human Resources (HR), and Alternative Dispute Resolution (ADR) practitioners from private and federal organizations gather for four days of outstanding education, training and professional development. There are three (3) plenary sessions and over seventy (70) open workshops that give participants the needed knowledge, and skills to enhance their performance, and meet the evolving demands of today's workplace.

The workshops are designated by attending audience to assist participants in selecting the most appropriate session. These designations are suggestions and participants are encouraged to explore the different open workshops. Participants are asked to select one open workshop from each of the sessions listed below. Plenary sessions occur on Tuesday, Wednesday and Thursday mornings.

**SUNDAY, July 28, 2019 (Conference Registration Check In: 3:00PM - 7:00PM)**

**MONDAY, July 29, 2019 (Conference Registration Check In: 7:00AM - 5:00PM)**

### **Pre-Conference Sessions:**

#### **EEO Counselor Refresher 8:00AM – 5:00PM**

*Virginia Andreu, Marcus Artis, Mark Ellison, and Timothy Bladek*

This course meets the annual eight-hour requirement for federal EEO counselors. Participants will receive instruction on recent developments in federal sector EEO and discuss how these changes affect the informal EEO complaint process. Participants will also practice their counseling and early resolution skills.

#### **EEO Investigator Refresher 8:00AM – 5:00PM**

*Carlisa Broadway and Barbara Dougherty*

This course meets the annual 8-hour requirement for federal EEO investigators. Participants will receive instruction on recent developments in federal sector EEO and discuss how these changes affect the formal EEO complaint process. Participants will also practice their investigation skills.

#### **Litigating before the EEOC and MSPB 8:00AM – 5:00PM**

*Diane Gross, Bill Macauley and two MSPB Administrative Judges*

Get tips of what to do and what not to do in hearings before the EEOC and the MSPB. This session will cover discovery, summary judgment, mixed cases, mixed appeals, settlements and sanctions.

#### **ADR Refresher Course 8:00AM – 5:00PM**

*Julie Procopiow Todd and Victor Voloshin*

Modeled after EEOC's popular Counselor and Investigator Refresher courses, this course is geared toward the federal ADR community. Participants will receive instruction on recent developments in federal sector ADR, including relevant case updates, best practices, and new approaches to conflict management. Participants will also practice their conflict resolution skills. This course does **not** qualify as a basic mediation training.

## **Leading for Respect: How Supervisors and Managers Can Create Respectful Workplaces**

**8:30AM - 12:00PM**

*Carlisa Broadway*

What's different? Rather than dwelling on legal standards and what NOT to do, this training will focus on WHAT TO DO – the words and actions that promote respect and fairness, and participants' responsibility for contributing to respect in the workplace. Supervisors practice skills in responding appropriately to employee complaints and discuss how they can create a sense of respect for their employees, focusing on the employee's perceptions of fairness and the supervisor's responsibility to respond with emotional intelligence. Finally, supervisors are taught simple but effective ways to coach employees whose behavior might be a problem – early intervention to nip problems in the bud before they rise to the level of illegal harassment. (Federal Managers and Supervisors)

## **Respect in the Workplace: Creating a Respectful Environment for all Employees**

**8:30AM - 12:00PM**

*Michael Rojas*

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## TUESDAY, July 30, 2019

7:30AM – 8:30AM

Continental Breakfast

**8:30AM – 10:00AM**

**PLENARY SESSIONS**

**10:00AM - 10:30AM**

**Mid-Morning Break**

**WORKSHOP SESSION I: 10:30AM – 12:00PM**

**A. Outsmarting Tricky Accommodation Issues**

*Christopher Kuczynski*

This session will explore complex reasonable accommodation issues and provide both legal and practical approaches to resolving them using a series of real-life scenarios. Those attending should be familiar with the basics of reasonable accommodation law and policy. (Private/Federal)

**B. Pregnancy Accommodation and the Changing Legal Landscape**

*Elizabeth Gedmark*

An employee who is, was, or may become pregnant is protected from discrimination and harassment in the workplace. This presentation will examine recent trends and insights into pregnancy discrimination law. It will focus on three key areas: 1) how courts have been interpreting the Supreme Court's 2015 decision in *Young v. UPS* and the application of the Pregnancy Discrimination Act, 2) the growing number of states granting protections to pregnant workers, and 3) understanding new trends on the horizon regarding pregnancy discrimination law. (Private/Federal)

**C. No Paper Resumes, Please: Age Discrimination in the IT Sector**

*John Wymer*

This panel will look at the special challenges that arise in the technology field for age-protected workers. The panel will focus on the assumptions and prejudices that inform hiring choices, difficulties in the IT sector with age discrimination claims, and how employers and employees can combat these stereotypes. (Private/Federal)

**D. Operationalize Civility at your Organization**

*Stephen Paskoff*

The EEOC has recognized that to eliminate the bad behavior and incivility in a workplace, an organization must link daily behavior to mission effectiveness and organizational values. Accordingly, organizations looking to change behaviors should not only focus on stopping illegal behaviors but must also reduce inappropriate and unprofessional behaviors before they rise to the level of discrimination. In this interactive session, attendees will be provided with practical daily tips to create a civil workplace environment that won't cost anything. This workshop will also demonstrate how values, leadership, team responsibilities and specific actions build enduring and productive workplaces where individuals do their best work and achieve the best results. (Private/Federal)

## **E. Advanced Topics and Tips for Practitioners at Hearing**

*Stephanie Herrera, Mary Palmer, and Diane Gross*

Experienced practitioners will benefit from discussions on the following topics: destruction of evidence issues, the role of the Agency representation including intrusion, involvement in the reasonable accommodation process and what is protected, working with pro se Complainants, what happens when there is no articulated explanation, the scope of equitable relief, attorney's fees petitions, hearing tips and more. (Federal)

## **F. What's New in the Federal Sector?**

*Dexter Brooks, Carlton Hadden, Barbara Dougherty, and Robbie Dix*

Each year brings changes and improvement to the federal sector, and 2019 was no exception. In this session, EEOC senior leaders and federal sector staff will summarize the latest developments and outline a roadmap for 2019 and beyond. Come prepared with questions and expect to leave this session with a greater practical knowledge of how these changes and plans may affect your agency, clients and day-to-day workplace responsibilities. (Federal)

## **G. EEO Pre-Complaint Counseling: How to Get the Most Out of the Limited Inquiry**

*Virginia Andreu and Camella Woodham*

EEOC MD-110 requires EEO counselors to conduct a "limited inquiry" during the pre-complaint process. But exactly what should this inquiry include and how extensive should it be? Because MD-110 affords agencies wide discretion in determining how to comply, questions continually arise. Attend this session to share your agency's experience and policies, learn from your colleagues, and walk away with a better understanding on how to conduct an adequate, efficient and effective limited inquiry. (Federal)

## **H. Federal Sector Portal: What's New in FedSEP?**

*Miwa Vickovic and Alma Anderson*

Are you a FedSEP user? Learn about changes and enhancements to FedSEP, including the deployment of a complementary Complainant Portal. (Federal)

## **I. Hard to Accept? A Discussion on Acceptance and Dismissal Issues**

*Timothy Bladek, Marqui Willoughby and Ingrid Dietsch Field*

Are EEOC dismissals still a mystery to you? Are you not quite sure when it's appropriate to use certain dismissal regulations? If so, the numbers show you are not alone; in 2019, 34% of procedural dismissals were remanded on appeal. To help demystify the decision-making process, this session will look at dismissal regulations under 29 CFR 1614.107, discuss real accept/dismiss scenarios, and explore the reasoning behind the Office of Federal Operation's decisions to remand or affirm. (Federal)

**12:00PM - 1:30PM    Lunch**

## **WORKSHOP SESSION II: 1:30PM – 3:00PM**

### **A. ADA Case Updates**

*Christopher Kuczynski*

Disability discrimination cases can be complex. Employers must be aware of the latest updates in case law on disability discrimination and issues impacting this area of law. This session will provide you with an analysis of significant cases and implications for employers. (Private/Federal)

### **B. Managing Up: Part I**

*Mary Abbajay*

Whether we like it or not, our bosses have enormous influence over our ability to succeed and advance in our organizations, our careers, and in our own leadership journey. Whether reporting to a supervisor, middle manager, VP, top executive, or board of directors, managing up is a skill that we all need. The first part of this two-part course will focus on establishing strong, productive working relationships with those above us. Participants also develop skills to manage personality differences that impact manager/staff relationships. (Private/Federal)

### **C. Social Media in the Workplace**

*Debra Finney and Krista Watson*

With almost three billion active social media users in the world today, social media is in the workplace. For employers, many issues can arise from an employee's use of social media. Issues of free speech, religion, race, etc. can result in workplace conflicts and complaints of harassment and discrimination. Employers are also utilizing social media as a tool to gather information about job applicants and employees. Learn when this use can be off limits and create legal issues for the employer. This session will cover these topics, weigh the pros and cons of social media and discuss how to manage the risk of social media use in the workplace. (Private/Federal)

### **D. Beyond the “Checked Box”: Race Inclusivity from Theory to Practice**

*Trent Norman and Rebecca Brown Adelman*

This session will explore the topic of race in the workplace using the interactive “Empty Chair” method. Through a facilitated opportunity to engage with a real-life theatrical situation, participants will learn from one another, without shame or blame, on how to create an inclusive and productive work environment. (Private/Federal)

### **E. Unpacking Race and Gender Discrimination as an Organizational Ombudsman**

*Bina Patel*

This presentation will address sensitive issues that a neutral third-party ombudsman handles in relation to race and gender discrimination. The presentation will provide insight into the issue as well as present case studies to illustrate the effectiveness of the ombudsman's role. (Private/Federal)

## **F. Hold Your Tongue: The First Amendment and Employee Speech**

*Joseph Kaplan*

This session will examine public sector employee speech in the context of the First Amendment to the U.S. Constitution. Since *Pickering v. Board of Education*, the Supreme Court has made it clear that public sector employees do not relinquish their free speech rights merely because they accept public sector employment. Taking action against employees for protected speech can land managers in hot water. On the other hand, there are limits on these speech rights that could land employees in trouble. This session will examine the predominant cases on free speech, discuss the intersection of these cases with the Whistleblower Protection Act and the Hatch Act and discuss how these cases may impact federal employees' use of social media to express their views. (Federal)

## **G. FAD Writing: Part I**

*Marqui Willoughby and Joel Kravetz*

This is Part 1 of a two-part class and will focus on the regulatory requirements for FADs, the structure of a model FAD, and a discussion on the theories of discrimination (i.e., disparate treatment, harassment, reasonable accommodation), while leaving time for questions and discussion on the most challenging issues for FAD writers. (Federal)

## **H. Establishing an Effective Federal Agency Anti-Harassment Program**

*Marcus Artis*

EEOC requires federal agencies to have internal anti-harassment policies and procedures that operate separately from the administrative EEO complaint process, and the U.S. Supreme Court has established that these policies/procedures may provide the agency with an affirmative defense to harassment claims. So why do so many agencies still lack adequate anti-harassment programs? Join EEOC experts for a nuts-and-bolts discussion covering the business case for such programs and a comprehensive update on EEOC's efforts to address federal sector workplace harassment, including a discussion of recent reports, cases and other initiatives. (Federal)

## **I. Litigating Damages in the Federal Sector**

*Gary Gilbert and Timothy Hagan*

Often the focus of litigation is on liability and little regard is paid to damages. But damages are the terrain on which many cases are fought, and the terrain on which they are settled or pushed to a hearing. This informative panel will go beyond the basics to consider problems that present themselves in difficult settlement or litigation scenarios including mitigation of back pay, bumping of innocent beneficiaries, front pay, preexisting conditions, interim relief, and more. (Federal)

**3:00PM - 3:30PM      Mid-Afternoon Break**

## **WORKSHOP SESSION III: 3:30PM – 5:00PM**

### **A. Inclusion Strategies for a Multi-Generational Workforce**

*April Simpkins*

For the first time in history, up to five generations of Americans are working side by side. This session will focus on how to recognize and incorporate the values, perspectives and contributions of each generation in order to create an inclusive work culture. The session offers practical strategies that effectively can be implemented both immediately and as part of a long-term strategic plan. (Private/Federal)

### **B. Managing Up: Part II**

*Mary Abbajay*

The second segment of this course will focus on proven strategies and techniques to increase cooperation and collaboration between those who have different power levels, perspectives, and personalities. Participants will receive tools on how to navigate “difficult” boss behaviors and adapt to different leadership styles while taking ownership for their own professional success. (Private/Federal)

### **C. Mental Health: Successful Methods in Job Accommodations**

*Beth Loy*

Do you experience challenges accommodating employees with mental health impairments? From the hiring process to on-the-job accommodations – including topics such as disclosure, attendance and conduct – a Job Accommodation Network (JAN) expert will provide guidance and share solutions to challenging issues that can help your workplace maintain a more inclusive and productive environment. (Private/Federal)

### **D. Building a Workplace Culture of Respect and Inclusion**

*Cathy Ventrell-Monsees and Elizabeth Bille*

Creating and fostering a culture of respect and inclusion is fundamental to preventing harassment in the workplace. Recent research shows that many employers are updating their policies and training, but surveys of employees report minimal progress in changing cultures that have tolerated harassment. Building on the work of the EEOC’s Select Task Force on Harassment and the work of other leaders in harassment prevention, join a panel of experts who will present strategies to promote respect, encourage reporting, and ensure accountability to build a workplace culture where harassment is not tolerated. (Private/Federal)

### **E. When Does Pressure to Mediate or Settle Become Coercion?**

*Tim Hedeem*

Mediation is touted as an effective and efficient process for voluntary dispute resolution. This interactive session will address the standards and ethics of mediation practice and will seek to discern the limits of encouragement to mediate, to remain at the table, or to reach agreement. Whether you mediate, advocate, or refer parties to mediation, come share your insights and learn new ones. (Private/Federal)

## **F. Why We Found Discrimination**

*Mary Palmer and Frances del Toro*

Two Chief Administrative Judges will give specifics of why discrimination was found in real cases, discussing the fact scenarios and the problematic issues in the cases. (Federal)

## **G. FAD Writing: Part II**

*Marqui Willoughby and Joel Kravetz*

In this second part of instruction on FAD writing, the class collectively will draft a sample final agency decision using principles from Part 1 and case file materials developed for this course. During this workshop, instructors will also introduce a model FAD as a basis for discussion on best practices and strategies on writing FADs. (Federal)

## **H. When is a Contractor Not a Contractor? When *Ma* Says So!**

*Ingrid Dietsch Field*

Do you or your agency struggle to process claims from contractors? Does EEOC surprise you with its contractor decisions? From a detailed discussion of the *Ma* case factors to EEOC's views on what constitutes a joint employer, this session will explore all things related to properly accepting or dismissing claims filed by those working under contractor status. By using numerous scenarios and tips on researching and processing from EEOC, this session will provide a new measure of clarity to your next contractor case. (Federal)

## **I. Navigating PIPs and Performance Cases**

*Julie Rook Gold and Alexis Tsotakas*

This presentation will focus on the challenges presented by PIP cases, including the interplay with other issues such as reasonable accommodations. Participants will learn how to implement and/or investigate PIPs where an employee needs an accommodation, or it is a mixed case issue, and what documentation is necessary to uphold a PIP. (Federal)

**5:30PM – 6:30PM**

# **2019 EXCEL Training Conference Reception**

**WEDNESDAY, July 31, 2019**

7:00AM – 8:30AM Continental Breakfast

**8:30AM – 10:00AM PLENARY SESSIONS**

**10:00AM - 10:30AM Mid-Morning Break**



## **WORKSHOP SESSION IV: 10:30AM – 12:00PM**

### **A. Making Best Use of the Respondent Portal**

*Martin Ebel*

We'll examine what the private sector Portal does, what's new, and what's coming in the future, including closure documents. (Private)

### **B. How to Manage the Non-Responsive Witness**

*Camella Woodham*

Challenging witnesses appear during all phases of the EEO process, from the initial intake interview through hearing. Of the many types of difficult witnesses – hostile, “forgetful,” aggressive, overly talkative, etc., – none is as frustrating and difficult to manage as the non-responsive witness. During this interactive session, participants will learn techniques to help maintain their professionalism, neutrality, humor and patience while securing the information necessary to ensure a complete interview, investigative record or hearing transcript. (Private/Federal)

### **C. Ethical Dilemmas for Mediators: What Would You Do?**

*Denise McKenney and Peter Swanson*

Every mediator has a story about a time when... This workshop will give real life examples of ethical challenges that mediators have faced, and strategies for dealing with them. Audience examples will also be used to navigate these thorny situations. (Private/Federal)

### **D. Opioids and Discrimination**

*Aaron Konopasky and David Knight*

Individuals with substance abuse disorders, including opioid use disorder (OUD), may face potentially discriminatory barriers to employment. In this presentation, we will discuss employment protections for individuals with OUD under Title I of the Americans with Disabilities Act (ADA), including protections against disparate treatment and the right to reasonable accommodations. The presenters will highlight recent enforcement efforts by the EEOC and the Department of Justice. (Private/Federal)

### **E. EEO Landmines: High Risk Areas**

*Debra Finney and Travis Nicholson*

How does an employer navigate the high-risk EEO areas such as retaliation, religious accommodation, disability accommodation, love in the office and more? This session will provide case examples, along with practical tips, to minimize the risks surrounding these workplace EEO landmines. (Private/Federal)

### **F. Emotional Intelligence: What is it and Why is it Important?**

*Chris Butts*

Come learn what emotional intelligence is and how to use it to improve your leadership skills and boost your social skills. As work becomes more collaborative in nature, individual success is often dependent on one's ability to communicate and influence rather than on any particular technical skill. Current research shows that emotional intelligence is more important in workplace success than technical and hard skills. During this session, you'll learn how to improve your sensitivity to organizational cues and avoid behaviors that derail success in the workplace. (Private/Federal)

### **G. Ask the AJ**

*Mary Palmer, Frances del Toro, Alison Smith-Lynn, and Diane Gross*

Do you have questions for our panel of veteran EEOC chief administrative judges? This is your opportunity to voice them. Come prepared for a lively, interactive session. Nothing is out of bounds except for discussions about specific cases. (Federal)

### **H. Navigating the Maze: Understanding Different Protections Under EEO and Civil Service Laws**

*Louis Lopez and Jo Linda Johnson*

Federal employees are protected from discrimination and retaliation under both EEO and civil service laws; many use both to seek redress. Federal agencies must cooperate in investigations conducted by EEO offices, and with the hearings process before the EEOC, if applicable, and with investigations conducted by the Office of Special Counsel, charged with investigating whistleblower violations. Employment law experts will help you better understand the overlapping, but distinct, rules and processes and more informed decisions about how to best resolve matters that cross the lines between EEO and the civil service laws. (Federal)

### **I. Selected EEO Complaint Processing Challenges**

*Joel Kravetz*

EEO practitioners continually are pressed to not only meet regulatory requirements, but also to deal with the unique challenges posed by issues such as "spinoff complaints," mixed cases, legal sufficiency, and official time disputes. This session will identify a series of distinctive matters faced during both informal and formal complaint processing and provide guidance and best practices to address them in an efficient and assured manner. (Federal)

## **12:00PM - 1:30PM Lunch**

## **WORKSHOP SESSION V: 1:30PM – 3:00PM**

### **A. Pride or Prejudice? Symbols and Workplace Discrimination**

*Carlisa Broadway*

Symbols - religious icons, ethnic totems, fraternal emblems, and team mascots - have long been used as a means of self-expression. But what happens when one person's symbol of pride is another person's symbol of bigoted expression, or when a symbol that reflects unity to one person reflects exclusion to another? Intentional or not, the display of symbols can engender controversy and hostility in the workplace. Join us to discuss how to navigate these issues, address employee concerns, and avoid creating inadvertent barriers to a work environment free from discrimination. (Private/Federal)

### **B. Legal Update 2019**

*Carol Miaskoff*

EEO law is dynamic, multifaceted, and developing as the courts interpret and apply the law to a rapidly changing workplace. Employers must remain vigilant and aware of the significant EEO court cases decided this year. Hear from the EEOC about the latest cases, precedent-setting decisions, and their implications for employers. (Private/Federal)

### **C. Toxic Communication in Mediation**

*Denise McKenney and Peter Swanson*

When people vent and become angry, throw insults, and engage in dysfunctional behavior, how do you handle it? This workshop provides tools and skills for managing your own internal reactions and neutralizing negative behaviors in others. (Private/Federal)

### **D. Creating a Culture of Workplace Accountability**

*Tucker Miller*

Harassment and incivility are still prevalent in our workplaces, and reducing those behaviors is critical to creating a place where people can do their best work. How do you become a champion of civility in your agency? This interactive session will explore what incivility and harassment look like and illustrate the risks these and other issues present to safety, employee engagement, customers and mission effectiveness. Learn steps to create and maintain a workplace culture that actively demonstrates a commitment to civility and professional values, build an effective case for civility and leadership accountability to achieve positive results, and develop an action plan that can be implemented in your place of employment. (Private/Federal)

### **E. Microaggressions in the Workplace**

*MarTeze Hammonds*

What are microaggressions and how are they relevant to the workplace? This engaging and interactive session explores microaggressions in the workplace and educates the audience about the trends, issues and problems surrounding social justice topics. The presenter will use personal stories, research and humor to address difficult topics. (Private/Federal)

### **F. How to Avoid Sanctions Before the EEOC**

*Deryn Sumner, Heidi Schandler, and Justin Evans*

Starting with *Cox v. Social Security Administration* and *Royal v. Dept. of Veterans Affairs* in 2009, the EEOC has issued a series of decisions imposing or affirming the imposition of sanctions against agencies that fail to timely complete investigations, fail to produce complaint files to the EEOC, or conduct deficient EEO investigations. This session will address the recent sanction-related EEOC case law, including the latest decisions dealing with improper intrusion into EEO investigations, and will examine how agencies can avoid sanctions. (Federal)

### **G. Ask OFO**

*Carlton Hadden, Dexter Brooks, and Robbie Dix*

This forum is a perennial favorite! Avail yourself of this no-holds-barred opportunity to speak your mind to a panel of Office of Federal Operations senior staff about any aspect of Appellate Review, Compliance and Control, and Federal Sector Programs. Bring any and all questions and suggestions and be prepared for a lively session! (Federal)

## **H. Properly Framing Harassment Claims**

*Marcus Artis*

A recent review of the Office of Federal Operation's appellate reversals shows that agencies often fail to distinguish between a complainant's factual allegations in support of her legal claim and the legal claim itself. Harassment/hostile work environment claims are particularly susceptible to such fragmentation, because agencies will dismiss each factual allegation separately, reasoning that the incident was insignificant and could not have affected complainant's work environment. In this session, participants will learn how to properly frame a hostile work environment case. (Federal)

## **I. EEOC – Leading the Way in Preventing Workplace Harassment**

*William Cash*

Increased awareness about workplace harassment has led to a historic increase in EEOC enforcement efforts, including filing an increased number of lawsuits and recovering a record amount of relief for victims of harassment working for private companies; state and local governments; and the federal government. This program will highlight the EEOC's role as an enforcer, educator and expert on the prevention of harassment. We will discuss examples of EEOC cases and best practices to prevent and stop workplace harassment. (Private/Federal)

## **3:00PM - 3:30PM Mid-Afternoon Break**

### **WORKSHOP SESSION VI: 3:30PM – 5:00PM**

#### **A. EEO-1 Filing: What You Need to Know**

*Benita Marsh*

This session covers everything you need to know about EEO-1 filing to ensure compliance including: guidance for filers, the difference between single vs. multi-establishment companies, how corporate changes may affect the company's EEO-1 report filing, i.e., acquisitions, mergers, spinoffs, new contact notification, methods of filing, establishment reports, where to get technical assistance, the due date for EEO-1 reports, and more. (Private)

#### **B. Trauma-Informed Interviewing**

*Janet Cook-Canary*

This cutting-edge session focuses on understanding trauma and how to interview persons who have been subjected to trauma. Participants will learn about the impact of trauma on the human brain, will be introduced to the concept of the "cognitive interview," and will learn how it can be used in EEO harassment cases. Participants will leave this session with a better understanding of trauma and new and useful techniques to conduct interviews on sensitive topics and difficult issues. Although this session is geared toward harassment investigations, the information and techniques should prove useful to counselors, investigators and anyone else who interviews witnesses in EEO matters. (Private/Federal)

#### **C. Ethics**

Lawyers are expected to maintain strict ethical standards – for the protection of colleagues, clients, the court, and anyone even tangentially affected by a case. Due to their role in society and close involvement in the administration of law, lawyers are subject to special standards, regulation, and liability. This session is two hours and is designed to meet qualifications for Ethics CLE credit. (Private/Federal)

**D. Histories; Mysteries; Fun Facts; Little Known Nuggets; Politics; and Important Cases in EEO Laws**

*Debra Finney and Krista Watson*

EEO professionals can benefit by understanding some of the basic history behind the federal anti-discrimination laws. We know what was going on in our country when these laws were passed, but how much do we know about how these laws were passed? What deals were made? Did they barely pass, or did they pass overwhelmingly? This class will take an unedited look back at some of the most important cases and the lowlights and highlights on our road to workplace equality. Take this opportunity to recognize and remember the struggle of civil rights in the workplace. (Private/Federal)

**E. Ombuds Practice in Federal Agencies**

*Tim Hedeem*

Ombuds programs are an expanding approach to ADR in federal agencies. Do you know what a federal agency ombudsman does? This session will trace the origin of ombuds practice from their creation by the Swedish parliament to contemporary federal ombuds offices. Learn about the important work of ombuds offices and how they relate to workplace discrimination and other mission critical matters. (Federal)

**F. I'd Like to Call My First Witness: A Practitioner's Guide to Litigating Before the EEOC**

*Jim Eisenmann and Timothy Hagan*

This session will focus on the nuts and bolts of presenting your case at an EEOC hearing. The panel will include seasoned complainant and agency practitioners who will share their experience on how to prepare for a hearing and what regulations, practices, and procedures to be aware of before the first witness is called. An EEOC Administrative Judge will add insight and perspective on the hearing process. Topics will include: prehearing submissions, how to prepare for and take an effective direct and cross examination, when and when not to use witnesses, how to introduce exhibits into the record, how to prepare for closing statements, and how to anticipate the issues that can arise from a finding of liability. (Federal)

**G. We Are Concerned for Your Safety: How to Address Fear of Violence in the Workplace**

*Stephanie Herrera and Zachary Wright*

With fear and speculation running rampant in the workplace after recent mass tragedies, this workshop will discuss concrete ways to ensure employee safety and address potential misconduct and mental health issues. This panel also will focus on the recent case law (EEOC and MSPB) involving fitness for duty examinations, medical inquiries, and disciplinary actions involving safety concerns or fear of violence in the workplace where a direct threat defense has been asserted. Various hypotheticals will be presented to address when it is appropriate for an agency to request that an employee submit to a fitness for duty examination, when an agency can request medical records (and who can view those records), and how best to evaluate and quickly respond to threatening comments or actions in the workplace. (Federal)

**H. Behind the Scenes with OFO's Reports and Evaluations Division's Data Team**

*Dr. Morgan Walls-Dines and Karen Brummond*

The EEOC's Office of Federal Operation's Reports and Evaluations Division (RED) is best known for producing the Annual Report on the Federal Workforce, collecting Form 462 data, and conducting program evaluations, but did you know that RED has a data team that conducts original research? Get a behind the scenes look at research the RED Data Team has conducted on the gendered nature of work-life programs and how crime prevention methods can be applied to harassment in the workplace. (Federal)

## **I. Section 501: Designing an Effective Reasonable Accommodation Program**

*Anupa Iyer*

EEOC's updated regulations on the federal government's obligation to engage in affirmative action for people with disabilities went into effect in January 2019. The Section 501 regulation requires federal agencies to have written reasonable accommodation (RA) procedures that meet certain minimum requirements. In this workshop, you will learn how to design an effective RA program and how to avoid some common pitfalls in the RA process. Learn new strategies and tips that will help ensure the success of your agency's RA program. (Federal)

## **THURSDAY, August 1, 2019**

7:00AM – 8:30AM

Continental Breakfast

**8:30AM – 10:30AM**

**PLENARY SESSIONS**

### **10:30AM - 10:45AM Mid-Morning Break**

### **WORKSHOP SESSION VII: 10:45AM – 12:15PM**

#### **A. Reprisal: Know It! Avoid it!**

*Joseph Kaplan*

This session will focus on the elements of a reprisal case, identify types of “protected activity,” examine burdens of proof and provide practical advice on how to avoid being named in an EEO reprisal complaint. (Private/Federal)

#### **B. Legal Update 2019**

*Carol Miaskoff*

EEO law is dynamic, multifaceted, and developing as the courts interpret and apply the law to a rapidly changing workplace. Employers must remain vigilant and aware of the significant EEO court cases decided this year. Hear from the EEOC about the latest cases, precedent-setting decisions, and their implications for employers. (Private/Federal)

#### **C. ADR Options for the Early Resolution of EEO Claims**

*Lee Parks, Halima Horton White, and Justin Evans*

This interactive workshop, which includes complainant's counsel, defense counsel and an administrative judge, will focus on how early mediation of harassment, hostile work environment and retaliation claims can benefit public and private complainants and employers. (Private/Federal)

#### **D. Tricky HR Scenarios: Sex Discrimination**

*William Cash, Cynthia Nance, and Daniel Herrington*

Most of what you hear in the media these days about sex discrimination is claims of sexual harassment. However, the law forbids discrimination based on sex in all aspects of employment. This session will explore several scenarios from the perspectives of employees, employers and the EEOC to address sex discrimination issues such as unequal pay, denial of advancement or promotion, job segregation and pregnancy discrimination. (Private/Federal)

## **E. What You Don't Know Can Hurt You and Others: Implicit Bias in the Workplace**

*Maria Flores and Mary Tiernan*

This session will begin with demonstrations and a discussion of judgment, perception, and memory examples that illustrate that we do not have complete control over our minds. An overview of research relating to implicit bias and the impact that this bias can have on the workplace will be presented. Participants will be provided with practical tips to minimize and manage the impact of implicit bias in the workplace. (Private/Federal)

## **F. How to Develop an Adequate Report of Investigation**

*Frances del Toro and Virginia Andreu*

EEOC regulations require federal agencies investigating EEO complaints to develop an impartial and appropriate factual record that will allow the fact finder to make findings and draw conclusions as to whether discrimination occurred. This workshop will provide guidance and promising practices on how to conduct a thorough investigation, gather relevant evidence, and develop an adequate report of investigation. An EEOC Chief Administrative Judge and Office of Federal Operations attorney will help participants understand the importance of an adequate investigation at the different stages of the complaint process. (Federal)

## **G. Special Challenges with EEO Complaints Involving Security Clearances**

*Rita Sampson, John Fellin, Tsedey Berhanu, and John Henderson*

Litigating EEO complaints with agencies in the intelligence community is a tricky business. How does the complainant get the documents to make their case when those documents are classified? Can the complainant share those documents with their legal representative who do not have a security clearance? Does the EEOC Administrative Judge who hears the case need to have a security clearance? These issues multiply when one factors in contractors and the expanding use of the “gig” economy. This experienced panel will discuss the special problems surrounding the intelligence community and EEO complaints, addressing the *Ma* case factors and recent decisions that impact EEOC processes unique to intelligence agencies. (Federal)

## **H. Mock Hearing**

*Alison Smith-Lynn, Jim Eisenmann, and Kevin Crayon*

Have you ever wondered what it's like to attend an EEOC hearing? Come observe for yourself! In this session, an experienced EEOC Administrative Judge will preside over a mock hearing conducted by agency and complainant's counsel. This session is for those who have never attended a hearing or have very limited knowledge of what a hearing is like. Whatever your involvement in the EEO process – counselor, investigator, complainant, manager, mediator or agency representative – this session is for you! (Federal)

## **I. Form 462: The Numbers Count!**

*Dr. Morgan Walls-Dines and Karen Brummond*

Federal agencies are required to submit Form 462 complaints reports to the EEOC by October 31<sup>st</sup> of each year. This session, aimed at experienced and new Form 462 preparers, will provide useful tips on how to complete an accurate Form 462, how to overcome common challenges, and how to submit the form in FedSEP. (Federal)

## 12:15 PM - 1:30 PM Lunch

### WORKSHOP SESSION VIII: 1:30 PM – 3:00 PM

#### A. Medical Marijuana: What's the Buzz?

*Eric Meyer*

The majority of states have now legalized medical marijuana. Yet, under federal law, marijuana remains an illegal Schedule 1 substance, and enforcement appears to be more of a priority than in the past. Employers face a unique management challenge. What does legalized marijuana mean for the workplace? How does it impact hiring and employee drug testing? Is it legal for employees to use marijuana at work? Should marijuana be considered a workplace accommodation to help an employee stay at work or return to work? This session will give you the answers to these questions and provide helpful tips on what you need to know about marijuana and its impact on employees, workplace policies and disability-accommodation laws. (Private)

#### B. National Origin Discrimination & Immigration: Related Unfair Employment Practices

*Maria Flores and Liza Zamd*

What do you know about national origin discrimination? Did you know that it includes issues such as properly completing the Form I-9/E-Verify, document abuse in verifying employment eligibility, requiring English language fluency, and backlash discrimination? Agency insiders will cover your national origin and citizenship status obligations under the laws enforced by the EEOC and the Department of Justice's Immigrant and Employee Rights Section. The panel will identify risk areas, provide concrete best practices, and share free resources available to you and your organization. (Private)

#### C. Tricky HR Scenarios: Selection Techniques

*William Cash, Cynthia Nance, and Daniel Herrington*

How do you pick the best applicant without getting yourself and your company in hot water? This session presents scenarios from the perspectives of employers, employees and the EEOC addressing hiring issues for the 21<sup>st</sup> century workplace. The presenters will tackle selection methods, different types of applicant testing regimens, applying qualification standards, and other techniques used in the hiring process. (Private)

#### D. Taking Diversity and Inclusion to the Next Level!

*Chandra Davis and Nzinga Shaw*

Attend this session for an interactive panel presentation and discussion on developing a diverse and inclusive culture, along with meaningful metrics you can use to demonstrate progress. Learn how to leverage diversity, an organization's most valuable asset, and take inclusion to the next level by looking at ways to engage all members of your organization. Gain valuable insight regarding metrics used to demonstrate diversity and inclusion progress, and learn how to show year-after-year improvement. Don't miss this opportunity hear about innovative ideas, best practices, and new trends that help you take your organization to the next level of diversity and inclusion! (Private/Federal)



#### **E. Integrated Conflict Management: Connecting Expertise to Employee Voice**

*Dawn Bedlivy and Marcella Deberry*

This presentation will introduce integrated management conflict systems and describe how the system can transform an employer's complaint processes by opening multiple avenues for employee voice, connecting that voice to agency expertise in conflict management, and greatly expanding the range of possible responses by the organization. This presentation will address the cost of conflict in organizations, explore how a combination of formal and informal processes can work together to produce better outcomes for the organization and its employees, and discuss how integrating the anti-harassment program as part of an integrated conflict management system allows for closure and reconnection. (Private/Federal)

#### **F. Initial Status Conferences: Do They Really Matter?**

*William Macauley, Alison Smith-Lynn, and Mary Palmer*

Whether you are a complainant, complainant's attorney or agency representative, come learn how to get the most out of the initial status conference. In this session, you will learn from experienced EEOC Administrative Judges what to expect during the conference and some practical tips on how to best prepare for one. (Federal)

#### **G. Navigating Medical Restrictions to Get Employees Back to Work**

*Zachary Wright and John Henderson*

Accommodating a federal employee's injury or disability can take many forms, and it is important to consider the practical problems faced by managers and other personnel assisting those employees. With protections under the ADA, FMLA, and OWCP, the range of accommodation possibilities may be difficult to navigate. The panel will offer practical strategies to address issues early on and how managers, human resources staff, and agency attorneys can prevent EEO problems from arising. (Federal)

#### **H. It's a Mixed-Up World: Understanding Mixed Cases**

*Stephanie Herrera, Joseph Kaplan, and Heidi Schandler*

Back by popular demand! Are you mixed up about what to do with a mixed case? This session will shed light on what a mixed case is, how to determine whether to file the case with the EEOC or the MSPB, the difference between an appeal and a complaint, considerations in deciding one forum over another, and more. Join this session to gain a better understanding of the rules, policies, and case authorities governing these cases, including an employee's burden of proof, agency affirmative defenses, and forum shopping. (Federal)

#### **I. Federal Sector Case Updates: Part I**

*Elyssa Santos-Abrams*

You've been busy over the last year, and so has the EEOC. Join Office of Federal Operations senior attorney and perennial audience favorite Elyssa Santos-Abrams for a lively and engaging discussion of the latest developments in EEOC case law, including emerging issues in the federal sector. This session will feature a different selection of cases from those discussed in Federal Sector Case Updates: Part II (Thursday at 3:30). (Federal)

**3:00 PM - 3:30 PM**

**Mid-Afternoon Break**

## **WORKSHOP SESSION IX: 3:30 PM – 5:00 PM**

### **A. Primer for Dealing with the EEOC: An Employer's Perspective**

*Barry Hartstein*

In this fast-paced session, attendees will gain insight on EEOC investigations, including a review of EEOC priorities, systemic investigations and subpoena enforcement actions from the perspective of an employer attorney. Participants will explore key EEOC statistics, including litigation and settlements during FY 2019. Finally, substantive issues from an employer's perspective will be addressed including: EEOC challenges involving hiring barriers, harassment litigation, compliance issues under the ADA, pay equity, and emerging issues based on the ADEA. (Private)

### **B. Human Trafficking and EEO Law**

*Darrell Green*

Human trafficking is not solely about sex. Anti-discrimination laws enforced by the EEOC, particularly those prohibiting discrimination on the bases of national origin, race, and sex, including sexual harassment, are vital to combating labor trafficking. In this session, learn about labor trafficking, the EEOC's efforts to combat it, and what you can do to avoid it. (Private)

### **C. ABC's of Disability Accommodation**

*Aaron Konopasky and Anupa Iyer*

Are you an EEO professional but unsure of how the reasonable accommodation (RA) process is supposed to work? Fear not! This session, in straightforward fashion, will provide key definitions and answers on who is an individual with a disability, what it takes to be qualified, how the interactive process should work after a request for a RA, and the undue hardship and direct threat defenses. Come with questions, and work through specific real-world RA scenarios that will get you up to speed on disability accommodations. (Private/Federal)

### **D. Preparing Witnesses for Deposition and Hearing**

*Nicole Diaz and Diane Gross*

Come learn effective ways of acclimating a person to the foreign environment of being a witness. This session will provide practical tips for complainants, their representatives, and agency representatives to prepare witnesses to testify at a deposition and hearing, including preparing the witness to respond to anticipated questions and documents, addressing objections during the deposition, and other general guidance. (Private/Federal)

### **E. Diving into Social Science and EEO**

*Dr. Morgan Walls-Dines and Karen Brummond*

Social sciences provide a myriad of resources to help prevent discrimination and promote diversity and inclusion. In this session, social scientists from EEOC's Office of Federal Operations will review recent research on what works to prevent and remedy discrimination in the workplace. (Federal)

## **F. Class for Special Emphasis Program Managers**

*Earl Banks and Terrian Hicks*

Special Emphasis Programs (SEP) are an essential part of any federal agency's equal employment opportunity program. Special Emphasis Program Manager (SEPM) positions were created to assist agencies in ensuring that EEO is present in all aspects of employment. This session is designed to provide an understanding of the legal and policy framework that supports implementation of SEPs, define the role of the SEPM, and provide basic instruction on barrier analysis. (Federal)

## **G. MD-715: Barrier Analysis**

*Lori Grant*

This presentation will cover the fundamentals of barrier analysis. Topics will include identification, root cause analysis, development of solutions to address barriers, and how to assess whether the solution successfully reduced or eliminated the targeted barrier. Special emphasis will be given to barrier analysis under the Rehabilitation Act, particularly affirmative action requirements. Each topic will feature a hypothetical exercise using typical problems encountered by agency personnel who conduct barrier analysis under MD-715. (Federal)

## **H. Collected Strategies: A Framework for Federal Disability Inclusion**

*Derek Shields and Bobbie Silverstein*

The Employer Assistance and Resource Network (EARN) in partnership with the Equal Opportunity Workgroup, developed a framework to help agencies create strong and effective affirmative action plans to promote disability inclusion. During this session, attendees will learn about Section 501 legal/regulatory requirements related to agency affirmative action plans and best practices for disability inclusion. Participants will explore how disability inclusion extends beyond recruitment and hiring to include the entire federal employment lifecycle. (Federal)

## **I. Federal Sector Case Updates: Part II**

*Elyssa Santos-Abrams*

This session will feature a different selection of cases from those included in Federal Sector Case Updates: Part I (Thursday at 1:30). EEOC attorney Elyssa Santos-Abrams will engage and entertain you with a detailed presentation of the latest developments in EEOC case law that highlights emerging issues in the federal sector. (Federal)

## **Closed Session**

### **MD-715: Barrier Analysis Track**

**July 30, 2019 1:30PM - 5:00PM**

**July 31 - August 1, 2019 10:30AM – 5:00PM**

*Crystal Grant and Ingrid Smith*

This session includes all aspects of the barrier analysis process including: legal and public policy foundations, analysis and interpretation of workforce statistics found in MD-715 data tables, trigger identification, barrier analysis investigation, organizing findings and preparing action plans designed to eliminate barriers, and follow-up on MD-715 reports from previous reporting cycles. The session will present hands-on simulations of actual situations typically encountered in preparing MD-715 reports. (Federal)